

103^D CONGRESS
2^D SESSION

H. R. 4360

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1994

Ms. LAMBERT (for herself, Mr. UPTON, Mr. BOUCHER, Mr. SCHAEFER, and Mr. MANTON) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Superfund Recycling
5 Equity Act of 1994”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to promote the reuse and recycling of scrap
2 material in furtherance of the goals of waste mini-
3 mization and natural resource conservation while
4 protecting human health and the environment;

5 (2) to level the playing field between the use of
6 virgin materials and recycled materials; and

7 (3) to remove the disincentives and impedi-
8 ments to recycling because of potential Superfund li-
9 ability.

10 **SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR**
11 **RECYCLING TRANSACTIONS.**

12 Title I of the Comprehensive Environmental Re-
13 sponse, Compensation, and Liability Act of 1980 is
14 amended by adding at the end the following new section:

15 **“SEC. 127. RECYCLING TRANSACTIONS.**

16 “(a) LIABILITY CLARIFICATION.—As provided in
17 subsections (b), (c), and (d), a person who arranged for
18 the recycling of recyclable material shall not be liable
19 under section 107(a)(3) or 107(a)(4).

20 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
21 poses of this section, the term ‘recyclable material’ means
22 scrap paper, scrap plastic, scrap glass, scrap textiles,
23 scrap rubber (other than whole tires), scrap metal, or
24 scrap lead-acid and nickel-cadmium batteries, as well as
25 minor amounts of material incident to or adhering to the

1 scrap material as a result of its normal and customary
2 use prior to becoming scrap.

3 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
4 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
5 involving scrap paper, scrap plastic, scrap glass, scrap tex-
6 tiles, or scrap rubber (other than whole tires) shall be
7 deemed to be arranging for recycling if the person who
8 arranged for the transaction (by selling recyclable material
9 or otherwise arranging for the recycling of recyclable ma-
10 terial) can demonstrate by a preponderance of the evi-
11 dence that all of the following criteria were met at the
12 time of the transaction:

13 “(1) The recyclable material met a commercial
14 specification grade.

15 “(2) A market existed for the recyclable mate-
16 rial.

17 “(3) A substantial portion of the recyclable ma-
18 terial was made available for use as a feedstock for
19 the manufacture of a new saleable product.

20 “(4) The recyclable material could have been a
21 replacement or substitute for a virgin raw material,
22 or the product made from the recyclable material
23 could have been a replacement or substitute for a
24 product made, in whole or in part, from a virgin raw
25 material.

1 “(5) For transactions occurring 90 days or
2 more after the date of enactment of this section, the
3 person exercised reasonable care to determine that
4 the facility where the recyclable material would be
5 handled, processed, reclaimed, or otherwise managed
6 by another person (hereinafter in this section re-
7 ferred to as a ‘consuming facility’) was in compli-
8 ance with substantive (not procedural or administra-
9 tive) provisions of any Federal, State, or local envi-
10 ronmental law or regulation, or compliance order or
11 decree issued pursuant thereto, applicable to the
12 handling, processing, reclamation, storage, or other
13 management activities associated with the recyclable
14 material. For purposes of this subsection, ‘reason-
15 able care’ shall be determined using criteria that in-
16 cludes (but is not limited to) (A) the price paid in
17 the recycling transaction; (B) the ability of the per-
18 son to detect the nature of the consuming facility’s
19 operations concerning its handling, processing, rec-
20 lamation, or other management activities associated
21 with the recyclable material; and (C) the result of
22 inquiries made to the appropriate Federal, State, or
23 local environmental agency (or agencies) regarding
24 the consuming facility’s past and current compliance
25 with substantive (not procedural or administrative)

1 provisions of any Federal, State, or local environ-
2 mental law or regulation, or compliance order or de-
3 cree issued pursuant thereto, applicable to the han-
4 dling, processing, reclamation, storage, or other
5 management activities associated with the recyclable
6 material. For the purposes of this paragraph, a re-
7 quirement to obtain a permit applicable to the han-
8 dling, processing, reclamation, or other management
9 activity associated with the recyclable materials shall
10 be deemed to be a substantive provision.

11 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

12 “(1) Transactions involving scrap metal shall be
13 deemed to be arranging for recycling if the person
14 who arranged for the transaction (by selling recycla-
15 ble material or otherwise arranging for the recycling
16 of recyclable material) can demonstrate by a prepon-
17 derance of the evidence that at the time of the
18 transaction—

19 “(A) the person met the criteria set forth
20 in subsection (c) with respect to the scrap
21 metal;

22 “(B) the person was in compliance with
23 any applicable regulations or standards regard-
24 ing the storage, transport, management, or
25 other activities associated with the recycling of

1 scrap metal that the Administrator promulgates
2 under the Solid Waste Disposal Act subsequent
3 to the enactment of this section and with re-
4 gard to transactions occurring after the effec-
5 tive date of such regulations or standards; and

6 “(C) the person did not melt the scrap
7 metal prior to the transaction.

8 “(2) For purposes of paragraph (1)(C), melting
9 of scrap metal does not include the thermal separa-
10 tion of 2 or more materials due to differences in
11 their melting points (referred to as ‘sweating’).

12 “(3) For the purposes of this subsection, the
13 term ‘scrap metal’ means bits and pieces of metal
14 parts (e.g. bars, turnings, rods, sheets, wire) or
15 metal pieces that may be combined together with
16 bolts or soldering (e.g. radiators, scrap automobiles,
17 railroad box cars), which when worn or superfluous
18 can be recycled, except for scrap metals that the Ad-
19 ministrator excludes from this definition by regula-
20 tion.

21 “(e) TRANSACTIONS INVOLVING BATTERIES.—
22 Transactions involving spent lead-acid batteries or nickel-
23 cadmium batteries shall be deemed to be arranging for re-
24 cycling if the person who arranged for the transaction (by
25 selling recyclable material or otherwise arranging for the

1 recycling of recyclable material) can demonstrate by a pre-
2 ponderance of the evidence that at the time of the trans-
3 action—

4 “(1) the person met the criteria set forth in
5 subsection (c) with respect to the spent lead-acid
6 batteries or nickel-cadmium batteries but did not re-
7 cover the valuable components of such batteries; and

8 “(2) either—

9 “(A) with respect to transactions involving
10 nickel-cadmium batteries, the Administrator has
11 promulgated regulations or standards regarding
12 the storage, transport, management, or other
13 activities associated with the recycling of spent
14 nickel-cadmium batteries, and the person was in
15 compliance with applicable regulations or stand-
16 ards or any amendments thereto; or

17 “(B) with respect to transactions involving
18 lead-acid batteries, the person was in compli-
19 ance with applicable regulations or standards,
20 and any amendments thereto, regarding the
21 storage, transport, management, or other activi-
22 ties associated with the recycling of spent lead-
23 acid batteries.

24 “(f) EXCLUSIONS.—(1) The exemptions set forth in
25 subsections (c), (d), and (e) shall not apply if—

1 “(A) the person had an objectively reasonable
2 basis to believe at the time of the recycling trans-
3 action—

4 “(i) that the recyclable material would not
5 be recycled,

6 “(ii) that the recyclable material would be
7 burned as fuel, or for energy recovery or incin-
8 eration, or

9 “(iii) for transactions occurring during the
10 90-day period beginning on the date of the en-
11 actment of this section, that the consuming fa-
12 cility was not in compliance with a substantive
13 (not a procedural or administrative) provision
14 of any Federal, State, or local environmental
15 law or regulation, or compliance order or decree
16 issued pursuant thereto, applicable to the han-
17 dling, processing, reclamation, or other manage-
18 ment activities associated with the recyclable
19 material;

20 “(B) the person added hazardous substances
21 into the recyclable material for purposes other than
22 processing or recycling; or

23 “(C) the person failed to exercise reasonable
24 care with respect to the management and handling
25 of the recyclable material.

1 “(2) For purposes of this subsection, an objectively
2 reasonable basis for belief shall be determined using cri-
3 teria that includes (but is not limited to) the size of the
4 person’s business, customary industry practices, the price
5 paid in the recycling transaction, and the ability of the
6 person to detect the nature of the consuming facility’s op-
7 erations concerning its handling, processing, reclamation
8 or other management activities associated with the recy-
9 clable material.

10 “(3) For purposes of this subsection, a requirement
11 to obtain a permit applicable to the handling, processing,
12 reclamation, or other management activities associated
13 with recyclable material shall be deemed to be a sub-
14 stantive provision.

15 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
16 this section shall be deemed to affect the liability of a per-
17 son under paragraph (1) or (2) of section 107(a).

18 “(h) PCBs.—An exemption under this section does
19 not apply if the recyclable material contained poly-
20 chlorinated biphenyls in excess of 50 parts per million or
21 any new standard promulgated pursuant to applicable
22 Federal laws.

23 “(i) REGULATIONS.—The Administrator has the au-
24 thority, under section 115, to promulgate additional regu-
25 lations concerning this section.

1 “(j) EFFECT ON PENDING OR CONCLUDED AC-
2 TIONS.—The exemptions provided in this section shall not
3 affect any concluded judicial or administrative action or
4 any pending judicial action initiated by the United States
5 prior to enactment of this section.

6 “(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-
7 TAIN ACTIONS.—Any person who commences an action in
8 contribution against a person who is not liable by oper-
9 ation of this section shall be liable to that person for all
10 reasonable costs of defending that action, including all
11 reasonable attorney’s and expert witness fees.

12 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER
13 LAWS.—Nothing in this section shall affect—

14 “(1) liability under any other Federal, State, or
15 local statute or regulation promulgated pursuant to
16 any such statute, including any requirements pro-
17 mulgated by the Administrator under the Solid
18 Waste Disposal Act; or

19 “(2) the ability of the Administrator to promul-
20 gate regulations under any other statute, including
21 the Solid Waste Disposal Act.”.

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